

Message Text

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ORIGIN DLOS-09

INFO OCT-01 ISO-00 OES-09 L-03 INR-10 INT-05 TRSE-00
DOE-15 SOE-02 SIG-03 MMO-01 OIC-02 ACDA-12
AGRE-00 AID-05 CEA-01 CEQ-01 CG-00 CIAE-00
COME-00 DODE-00 DOTE-00 EB-08 EPA-01 FMC-01 H-01
IO-13 JUSE-00 NSAE-00 NSC-05 NSF-01 OMB-01 PA-01
PM-05 SP-02 SS-15 ICA-11 AF-10 ARA-10 EA-10
EUR-12 NEA-10 /196 R

DRAFTED BY D/LOS:GTAFT:LS
APPROVED BY S/AR:ELRICHARDSON
S/AR:AGJAMES
OES/OFA/OCA:JWZEROLIS
L/OES:POLSON
INR/RGE:RDHODGSON
INT/USGS:RROWLAND
TREAS:GCHRISTOPOLUS
DOE:JDUGGER

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R 262020Z JUL 78
FM SECSTATE WASHDC
TO ALL DIPLOMATIC POSTS

C O N F I D E N T I A L STATE 188840

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: RESUMED SEVENTH SESSION AND THE CONTINENTAL
SHELF

1. ONE OF THE MAJOR OUTSTANDING ISSUES THAT WILL BE THE
FOCUS OF ATTENTION AT THE RESUMED SEVENTH SESSION IN NEW
YORK BEGINNING ON AUGUST 21 IS THE DEFINITION OF THE OUTER
LIMIT OF THE CONTINENTAL SHELF WHERE IT EXTENDS BEYOND 200
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MILES AND THE RELATED QUESTION OF REVENUE SHARING. AS
REPORTED IN THE UNCLASSIFIED DELEGATION REPORT (A-1985,
5/3U/78), THE "IRISH FORMULA" FOR DEFINING THE SHELF WAS
GAINING SUBSTANTIAL SUPPORT AT THE RECENTLY CONCLUDED
PORTION OF THE SEVENTH SESSION. IT IS A FORMULA WHICH IS
SUPPORTED BY THE USG, MANY OTHER STATES WITH ROAD MARGINS
INCLUDING AUSTRALIA, ARGENTINA, CANADA, NEW ZEALAND, INDIA,

IRELAND, UK AND OTHER MEMBERS OF THE EEC, NORWAY, PAKISTAN, PHILIPPINES, AND MALAYSIA, AS WELL AS CERTAIN KEY LAND-LOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES, INCLUDING AUSTRIA AND SINGAPORE. THE SOVIET UNION DURING THE COURSE OF THE SEVENTH SESSION SUGGESTED A FORMULA WHICH WOULD LIMIT COASTAL STATE RESOURCE JURISDICTION OVER THE SHELF TO A MAXIMUM OF 300 MILES WHERE THE SHELF SO EXTENDS. THIS PROPOSAL WAS SUPPORTED BY THE EASTERN EUROPEAN BLOC AND CUBA. AT THE SAME TIME THE GROUP OF ARAB STATES RAISED AGAIN THEIR SUGGESTION TO CUT OFF COASTAL STATE RESOURCE JURISDICTION ON THE SHELF AT 200 MILES ALTHOUGH THEY PRIVATELY INDICATED THEY COULD AGREE TO A FORMULA FOR DEFINING THE SHELF BEYOND 200 MILES. BUT FOR THE SOVIET PROPOSAL THE IRISH FORMULA WOULD HAVE HAD ENOUGH SUPPORT TO SUBSTANTIALLY INCREASE THE LIKELIHOOD OF CONSENSUS. THE SOVIETS STATED THAT THEY PUT FORTH THEIR SUGGESTION IN ORDER TO ACHIEVE CONSENSUS AND HAVE STATED REPEATEDLY THAT THEY HAVE NO SPECIFIC SOVIET INTEREST AT STAKE. AT THE SAME TIME WE AND OTHERS HAVE INDICATED TO THE SOVIETS THAT THEIR PROPOSAL COULD NOT FORM THE BASIS FOR CONSENSUS AND SHOULD NOT BE PURSUED.

2. POSTS (EXCEPT AS NOTED IN PARAS 3, 4 AND 5) ARE REQUESTED TO APPROACH APPROPRIATE OFFICIALS IN FOREIGN MINISTRY AND MAKE FOLLOWING POINTS:

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BEGIN UNCLASSIFIED:

-- USG WAS ENCOURAGED BY THE PROGRESS MADE AT THE MARCH-MAY PORTION OF THE SEVENTH SESSION OF THE UN CONFERENCE ON THE LAW OF THE SEA. WE VERY MUCH HOPE THAT THIS PROGRESS AND SPIRIT OF COOPERATION WILL BE RENEWED AT THE RESUMED SESSION COMMENCING IN NEW YORK ON AUGUST 21.

-- AMONG THE ISSUES WHICH WERE NOT RESOLVED AT THAT MEETING WAS THE QUESTION OF PRECISELY DEFINING THE OUTER EDGE OF THE CONTINENTAL SHELF WHERE IT EXTENDS BEYOND 200 MILES FROM SHORE. THIS ISSUE HAD PREVIOUSLY BEEN IDENTIFIED BY THE CONFERENCE AS A HARD-CORE OUTSTANDING ISSUE WHICH MUST BE SATISFACTORILY RESOLVED IN ORDER TO ACHIEVE A COMPREHENSIVE AND BROADLY ACCEPTABLE TREATY.

-- THERE IS WIDESPREAD RECOGNITION AT THE CONFERENCE THAT AN ACCOMMODATION ON THIS ISSUE WOULD INCLUDE A PRECISE DEFINITION OF THE MARGIN BEYOND 200 MILES COUPLED WITH REVENUE SHARING FOR THE BENEFIT OF LESS DEVELOPED COUNTRIES FROM THE EXPLOITATION OF MINERAL RESOURCES OF THE MARGIN BEYOND 200 MILES. THIS ACCOMMODATION, COUPLED WITH THE SUBSTANTIALLY INCREASED LIKELIHOOD OF CONSENSUS

ON THE ISSUE OF THE RIGHT OF ACCESS OF LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES TO FISH IN THE EXCLUSIVE ECONOMIC ZONES OF OTHER STATES IN THEIR REGION OR SUBREGION, WOULD MEET THE NEEDS OF BOTH BROAD MARGIN COUNTRIES AND COUNTRIES WITH NARROW OR NO MARGIN.

-- THE US SUPPORTS THE PROPOSITION THAT ANY FORMULA FOR DEFINING THE MARGIN BEYOND 200 MILES MUST BE SCIENTIFICALLY SOUND, LEGALLY DEFENSIBLE, AND POLITICALLY REALISTIC. THE IRISH FORMULA MEETS ALL THREE OF THESE CRITERIA. AS THE RECENT SECRETARIAT STUDY ON THE

CONTINENTAL MARGIN INDICATED, THE METHOD IS SCIENTIFICALLY SOUND. IT IS PERHAPS NOT AS SIMPLE AS ONE WOULD IDEALLY
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HOPE FOR BUT WE ARE DEALING WITH A RATHER COMPLICATED QUESTION AND HENCE A LESS THAN FULLY SIMPLE ANSWER IS REQUIRED. THE IRISH FORMULA IS LEGALLY DEFENSIBLE. AS A LEGAL MATTER, IT MORE PRECISELY DEFINES THE CONTINENTAL MARGIN THAN IS THE CASE IN EXISTING ARTICLE 76 OF THE ICNT. THE IRISH FORMULA IS POLITICALLY REALISTIC. IT ACCOMMODATES THE LEGITIMATE ASPIRATIONS OF THE BROAD MARGIN STATES, YET IT DOES NOT RPT NOT RECOGNIZE THEIR JURISDICTION OVER THE RESOURCES THAT MIGHT BE FOUND IN THE SO CALLED LAST GRAIN OF SAND OF CONTINENTAL ORIGIN. IT DOES NOT IMPINGE UPON THE COMMON HERITAGE OF MANKIND. INDEED, AS SUGGESTED BY THE SECRETARIAT STUDY, IT HAS ALL THE ASPECTS OF A REALISTIC POLITICAL ACCOMMODATION.

-- THE IRISH FORMULA AS WELL AVOIDS THE VERY DANGEROUS FLAWS OF A STRAIGHT DISTANCE CRITERION WHICH IS UNRELATED TO NATURAL FEATURES. WHILE SUCH A PROPOSAL RELYING ON A STRAIGHT DISTANCE CRITERION CLEARLY HAS THE ADVANTAGE OF SIMPLICITY, IT RAISES SERIOUS QUESTIONS ABOUT THE EFFECT OF DRAWING AN ARBITRARY LINE ON THE SURFACE OF THE OCEAN AND POTENTIAL COASTAL STATE JURISDICTION IN THE WATER COLUMN BEYOND 200 MILES, WHICH IS IN THE INTEREST OF NO COUNTRY. IN ADDITION, THE PROPOSALS EMBODYING THE DISTANCE CRITERION UNRELATED TO NATURAL FEATURES DO NOT RPT NOT MEET THE INTERESTS OF MANY BROAD MARGIN STATES, BOTH DEVELOPED AND DEVELOPING AND CANNOT FORM THE BASIS FOR CONSENSUS.

-- MANY DEVELOPED AND DEVELOPING BROAD MARGIN COUNTRIES HAVE TOLD US THAT SATISFACTORY RESOLUTION OF THIS ISSUE IS THE SINGLE MOST IMPORTANT INTEREST THAT THEY HAVE IN AN LOS TREATY. THE IRISH FORMULA IS INDEED A COMPROMISE WHICH CAN SATISFY EVERYONE'S INTERESTS.
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-- THE IRISH FORMULA IS THE ONLY BASIS FOR CONSENSUS AT THE CONFERENCE.

-- IT IS NOT ENOUGH, HOWEVER, TO MERELY EXPOUND THE VIRTUES OF A DEFINITION OF THE MARGIN. IT IS ABSOLUTELY ESSENTIAL TO APPRECIATE THAT THERE MUST BE MEANINGFUL REVENUE SHARING FROM EXPLOITATION OF THE MINERAL RESOURCES BEYOND 200 MILES. IN THIS REGARD THERE IS A GENERAL UNDERSTANDING AT THE CONFERENCE THAT THIS REVENUE SHARING OBLIGATION MUST ON THE ONE HAND BE SUFFICIENT TO BE PART OF A MEANINGFUL ACCOMMODATION AND ON THE OTHER HAND BE REALISTIC ENOUGH SO AS NOT TO DISCOURAGE EXPLOITATION IN AREAS OFFSHORE. IN THIS REGARD A REASONABLE BALANCE

WOULD INCLUDE REVENUE SHARING COMMENCING FIVE YEARS AFTER COMMERCIAL EXPLOITATION HAS BEGUN BASED UPON A VALUE OF THE PRODUCTION AT THE SITE WITH THE RATE INCREASING IN ONE PERCENT INCREMENTS UP TO AN AGREED MAXIMUM.

-- AT THE SAME TIME THE REVENUE SHARING OBLIGATION SHOULD APPLY TO ALL AREAS OF THE MARGIN SUBJECT TO COASTAL STATE RESOURCE JURISDICTION BEYOND 200 MILES. IT IS RECOGNIZED THAT THERE MUST BE AGREED UPON SOME FORMULA WHEREBY AN ADJUSTMENT COULD BE MADE IN THE DISTRIBUTION OF BENEFITS THAT WOULD TAKE INTO ACCOUNT THE CONTRIBUTIONS MADE BY THE DEVELOPING COUNTRIES WHICH EXPLOITED THE RESOURCES OF THE MARGIN BEYOND 200 MILES.

-- WE BELIEVE THAT THESE THREE ELEMENTS SHOULD FORM THE BASIS FOR THE NEGOTIATIONS AND AGREEMENT AT THE RESUMED SESSION IN NEW YORK.
END UNCLASSIFIED.

3. EMBASSIES BUENOS AIRES, CANBERRA, DUBLIN, LONDON, NEW DELHI, OSLO, OTTAWA, AND WELLINGTON (MEMBERS OF MARGINEERS
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GROUP) ARE REQUESTED NOT TO MAKE DEMARCHE BUT MERELY TO INFORM LOS OFFICIALS OF US DEMARCHE TO OTHER POSTS AND GIVE COURTESY COPY OF TALKING POINTS.

4. EMBASSY MOSCOW SHOULD NOT RPT NOT MAKE DEMARCHE IN LIGHT OF OTHER APPROACHES TO SOVIETS, BUT MAY, IN RESPONSE TO DIRECT USSR QUERY, INFORM THEM OF OUR INITIATIVE.

5. EMBASSIES, OTHER THAN THOSE NOTED IN PARAS. 3 AND 4,
MAY USE THEIR DISCRETION AS TO WHETHER TO MAKE DEMARCHE
UASED UPON WHETHER OR NOT HOST COUNTRY IS ACTIVE IN LOS
MATTERS. CHRISTOPHER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CONTINENTAL SHELF
Control Number: n/a
Copy: SINGLE
Draft Date: 26 jul 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STATE188840
Document Source: CORE
Document Unique ID: 00
Drafter: GTAFT:LS
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780308-0062
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780718/aaaaaoqn.tel
Line Count: 229
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: c0f0576c-c288-dd11-92da-001cc4696bcc
Office: ORIGIN DLOS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 09 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1877329
Secure: OPEN
Status: NATIVE
Subject: LOS: RESUMED SEVENTH SESSION AND THE CONTINENTAL SHELF
TAGS: PLOS
To: ALL POSTS
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/c0f0576c-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014